

## **The Right To Self Determination Under the FDRE Constitution: Issues, Challenges And The Way Forward**

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### **Abstract**

The 1995 FDRE Constitution established ethnic federalism and restructured the regions along ethnic linguistic lines. Thus the constitution has given much protection to nation, nationality and people of Ethiopia to have the right to self - determination up to and including secession as a solution to resolve past injustice and civil war. However, reality shows that Ethiopia is still very much controlled by central government, and the constitutional guaranteed rights of nationalities are not adequately implemented in a genuine manner. The most debating issue is the constitution has focused on the rights of nations, nationalities and peoples to secession and self-determination rather than establishing a clear procedures for sufficient representation of the diverse ethnic groups in the government institutions. Really it is difficult to exercise secessionist self-determination in the context of Ethiopia which has been influenced by centuries of migration and interaction between ethnic groups, who have created a complex pattern of ethnic, linguistic and religious groups. The article thus attempts to highlight some of the outstanding controversial issues, and challenges of the external aspect of the right to self-determination. To this end, the study draws from extensive literature reviews, previous research works, and journal articles relating to the issue of the topic. And finally, conclusions and recommendations will be drawn.

**Key words:** - Ethnic federalism, the right to self-determination and the right to secession

### **1. Introduction**

Ethiopia adopted ethnic federalism and restructured the regional states along ethnic lines as soon as the Ethiopian People's Revolutionary Democratic Front (hereafter EPRDF) took political power by overthrowing the military regime in 1991. The EPRDF declared their commitment to a clean break with the past and the establishment of a federal polity based on democracy and rule of law (Wondwosen, 2008). Under the new regime, Ethiopia was reconfigured into an ethnic federation composed of nine member states delineated on the basis of settlement patterns, language, identity, and consent of the people concerned. Thus, member states include Tigray, Afar, Amhara, Oromiya, Somali, Benishangul-Gumuz, Southern Nations, Nationalities, and peoples, Gambela, and Harari regional states. In addition, there are two city administrations such as Addis Ababa and Dire Dawa Administration council (FDRE 1995, Art. 46 and 47). Those states to be considered as sovereigns within the territorial jurisdiction of their own matters.

The new political system immediately reflected in the 1995 FDRE constitution which guaranteed the protection of the nation, nationalities and peoples of Ethiopia. That is why the constitution has given much recognition to the ethnic diversity and the willingness to accommodate it through the right to self-determination up to and including secession. The right to self-determination as conceived under the constitution is very broad and includes language rights, cultural rights and rights of self-administration (Chi mgbako et al, 2008). The recognition of the internal aspect of self-determination helps to establish democratic governance and to build the peaceful coexistence among ethno-nationalities. However, the constitution takes the right to self-determination to the extreme by extending up to the right to succession. This is the most controversial issue in Ethiopian politics.

In Ethiopia ethnic-federalism and the right to self-determination has produced polarizing debates among scholars for the last twenty six years. Most specifically, article 39 of the constitution is the most controversial provision in Ethiopian politics. On the one hand, the EPRDF government and its supporters argued that the recognition of the right of self-determination has become imperative to

solve historical unjust relationship among ethno nationalities and to establish peace and democracy in the country. They further argued that denial of this right implies denial of their existence and this is a clear violation of their fundamental rights (Belay, 2010). On the other hand, the opponents of ethnic federalism argued that organizing politics along ethnic lines invites ethnic conflict and risks national disintegration. Constructing and initiating ethnic pillars are a source of ethnic tensions and conflicts which lead a serious human rights violations in different parts of the country. Unless we amend the constitution, the future fate of the country will be threatened or disintegrated like other failed federations (Clapham, 2002). From this we can understand the recognition of the right to external self-determination can be the main challenge of national unity when the country is currently facing. As a result, in this article, it is difficult to cover all aspects of self-determination. So, in order to be manageable this article tries to assess the debating issues and challenges of the external aspect of self-determination under the FDRE constitution.

## **2. Ethnic Federalism in Ethiopia**

As we have seen, the 1995 constitution establishes a federal state structure composed of two autonomous entities, i.e. the federal state and subnational entities. Accordingly, both the federal and regional states establish their own institutional organs such as the legislative, executive and judicial bodies and exercise autonomous power within their sphere of influence (Abate, 2004). In principle, under Article 39(3), of the constitution every ethno-nationalities has the right to self-administration and equitable representation at both the regional and federal levels of government. To this regard in contrast to the previous constitutions, significant improvement has been shown in power devolution from the central government to the regional states.

However, ethnic-federalism for the last twenty six years in Ethiopia has produced controversial debate among scholars. EPRDF and its advocates argued that, despite the horrific experience of interethnic conflict and disintegration in the former USSR and Yugoslavia federations, federalism is still popular for reconciling unity and diversity under a single political system. Obviously, in USA, Switzerland, Canada and Australia, federalism and political decentralization contribute to regional stability by sharing power with the lower levels of government to decide on their own affairs (Siraw, 2015). It is true that Federalism might be the best political option to promote respect for self-rule of culturally distinct interests in multi-ethnic societies like Ethiopia. In contrast to the previous regimes, significant improvement has been shown regarding to the accommodation of ethnic diversity through the right to self-determination (Getachew, 2011). That is why the EPRDF government regularly mention that the current federal system has offered an opportunity to promote the rights and benefits of ethnic groups in Ethiopia. But those opportunities combined with so many challenges and difficulties.

In contrast to the above view, many scholars argued that ethnic federalism accentuates ethnic conflicts, facilitates secession, and eventually leads to the disintegration of countries. It could overemphasize centrifugal forces at the expense of centripetal ones as shown practically in the Soviet Union (1991), Yugoslavia (1991) and Czechoslovakia (1993) where federalism failed to prevent countries from disintegration (Fasil, 1997). This indicated that the mere application of federal political system is not guarantee for the disintegration of a country without genuine democracy and the promotion of human rights.

In Ethiopia, due to demographic and political factor in the past, people of different backgrounds move, migrate and intermix especially when they share common historical and political community rather than focusing on distinct identity. That is why many people argued that ethnic federalism has been also unsuccessful in accommodating many Ethiopians who wish to identify themselves first as Ethiopians instead of their predefined ethnic identity (Clapham, 2002, Teshome.W and ZahorikJ, 2008). Obviously, the current political structure is source of many communal and intra-state conflict in today's Ethiopia. Today there are high amounts of internal migration as people moved to live within their ethnic territory so as to escape from any form of violence and disorder. The source of such deadly conflicts are associated with issues related to self-determination/secession, resource sharing, political power, representation, ethnic identity, and regional boundaries and so many others (HRW, 2009, Siraw, 2015). After Ethiopia introduced federalism, thousands of Ethiopians were

killed as a result of ethnic based conflict in different parts of the country. As an example, in most recently, Mr Adisu<sup>1</sup> said that thousands of people have fled Ethiopia's Somali region following deadly clashes between ethnic Somalis and Oromos. These causes for many Ethnic Oromos were killed and others were forced to refuge in makeshift camps at a stadium in the eastern city of Harar, and the remaining is camping at police stations. That is why many people argued that the ethnic federal system is designed to perpetuate the Tigray People's Liberation Front (TPLF) position in power by divide and rule strategies (Tronvoll, 2000) rather than to promote the right to self-determination of all ethno-nationalities.

### 3. The right to self-determination in international human rights law

In various forms, the principle of self-determination has long been a central political and legal claim in world history. Through gradual development, the right to self-determination is included in the major international human rights law (Girmachew et al, 2013). As a result, the UN Charter under Article 1 (3) provide that one of its main purposes of the organization is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". "Declaration of the Granting of Independence to Colonial Countries and Peoples" of 14 December 1960. This Declaration on Colonial Independence under Resolution No. 1541 that recognized self-determination as an instrument of decolonization, for the purpose of securing international peace, stability and respect for human rights. However, the UN has never accepted the principle of secession of part of a state in its 1961 resolution. Thus, secessionist self-determination cannot be exercised if all people enjoy equal rights within a state and exercise democracy in which there is a representative government who representing the whole people of the country (Abate, 2004).

Moreover, the right to self-determination is included into two major international human rights instruments. Both the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) under their common Article 1 recognized the right to self-determination for the first time as a substantive right of all peoples. However, despite the landmark political significance, the right to self-determination in both covenants is extremely unclear and controversial as regards its legal content. Obviously, the historical background of article 1 in both covenants is characterized by fundamental differences of opinion between socialist and capitalist blocks. To this end, the adoption of a separate right to self-determination was initiated and supported by socialist and Third world states, while most western states are opposed and voted against it due to self-interest. The latter argued that self-determination is a political principle and not a legally enforceable right; accordingly it fails to fit into human rights convention based on the protection of the individual rights (Abate, 2004).

More specifically, the external aspect of self-determination, however is not an absolute right that can be exercised by everyone except some accepted conducive factors for secession. That why countries that supporting a "restricted interpretation" of self-determination in their legal system. For instance, India, which posed the following reservation to the Article 1 at the time of its ratification: *... India declares that "the right of self-determination" appearing in those articles apply only to the peoples under foreign domination but not apply to sovereign independent States* (Burak Cop and Doan Eymirliolu, 2005).

Therefore, the right to defend their distinct identity and unique characteristics that distinguish them from other members of the human family is an important task for the protection and promotion human rights. But the right to secession is not supported by international human rights law except for two types of populations such as 1) postcolonial peoples and 2) peoples suppressed by "foreign domination" (Abate, 2004). That is why most international human rights treaties is not recognize the right to secessionist self-determination.

<sup>1</sup>He is Oromia regional state's spokesperson who said the clashes had displaced at least 55,000 people across Ethiopia's Oromia and Somali regions

#### **4. The right to self-determination under the FDRE constitution**

The 1995 constitution under Article 39(1) stipulates that every nation, nationality and people of Ethiopia has unconditional right to self-determination, including the right to succession. This provision has given recognition to both internal as well as external aspects of self-determination. The internal aspect of self-determination concerns the rights of Nations, Nationalities and Peoples to speak, write and develop their own languages as well as to express, to develop, promote and preserve their culture and history as well as a full measure of self-government (Abate, 2004). This is the most legitimate claim of ethno-nationalities when everyone agreed on it.

On the other hand, the article 39 (1) of the constitution has given the right of nation, nationality and people has an unconditional right to self-determination including the right to secession as their guarantee not to be subjected to the violation of their human and democratic rights. The exercise of self-determination including secession of every nation, nationality and people in Ethiopia is governed by the following procedures:- (a) the demand is supported by a two-thirds majority vote of the regional state legislature in which the ethno-cultural community is found; (b) the federal government organizes a referendum for the ethno-community requesting such referendum within three years of that vote by the regional legislature; and (c) the referendum is supported by a majority vote of the same ethno-cultural community (d) the Federal Government will have transferred its powers to the Council of the Nation, Nationality who has voted to secede; and (e) when transfer of power and division of assets has been effected.

Pursuant to article 39(5) of the constitution, a nation, nationality or people for the purpose of this constitution is a group of people who have or share a large measure of a common culture, or similar customs, mutual intelligibility of language, belief in a common or related identities, and who predominantly inhabit an identifiable, contiguous territory."

However, provision on the right to self-determination in the constitution characterized by fundamental differences of opinion. The EPRDF government justified that right to self-determination is recognized in the constitution as the best mechanism to check historical unjust relationship among the Nations, Nationalities and Peoples of Ethiopia (Abate, 2004). This helps to establish democratic governance and to build the peaceful coexistence among ethno- nationalities.

On the other hand, scholars argued that article 39 causes for inter-ethnic conflict and a source of political instability in the country for the last twenty six years. In fact, there is ambiguity in the constitution that declares the right to self-determination up to secession to every ethnic group in Ethiopia. It becomes a challenging task to adequately and fairly implement ethnic demand in the context of Ethiopia which has been influenced by centuries of migration and interaction among ethno-nationalities, who has created a complex socio-political system (Brhanu, 2007). However, the right to self-determination is a complex notion having many components. So that, in the next section, we will examine the controversies and challenges of the right to secession under the FDRE constitution.

#### **4. The right to secession in the FDRE constitution**

The right to secession is one of the peculiar features of the Ethiopian federation that again emanates from the overriding significant given to the nation, nationalities and peoples (Adem, 2011). As discussed above the FDRE Constitution under Article 39 (4) has conferred to ethno-cultural communities not only the right of self-determination but also the right to secede and establish an independent state of their own. Of course, secession could only be exercised through long and stringent procedural requirements. After passing such requirement the right to secession is one of democratic right of nationalities regardless of their numerical, historical and political status in the constitution.

Theoretically, the right to secession is definitely the most controversial issue in Ethiopian politics. The EPDRF government and its supporters argue that the right to self-determination including secession in the constitution helps to ensure peace and stability, and gain the support of many ethnic groups. As a matter of fact, the provision of the right to secession has a value for those nations and nationalities as a guarantee for their interest, to exploit their natural resources and to



govern themselves with full confidence hoping that if the federal government abused their rights they have unconditional right to secede from the federation (Fasil,1997).

On the other hand, many scholars argued that Article 39 of the constitution causes for intra-ethnic conflict and a source of human rights violations in the country for the last twenty six years. Specially, secessionist self-determination is against the will of most ethno-nationalities instead it is a hidden strategies of EPRDF/ TPLF to maintain its power by divide and rule strategies. As disused before the various United Nations resolutions support self-determination for two types of populations such as postcolonial peoples and peoples suppressed by foreign domination. However, the reality in present-day Ethiopia does not fit precisely into one of the above categories. Similarly, the UN has never confronted the question of whether a dominant minority population may secede from its nation-state in the name of self-determination (Mathew J. McCracken, 2004). That is why so many cultural and regional minorities are unhappy with the new government of Ethiopia about the intension of secession, and the procedural requirements for secession. As Marijke (2009) points out, the inclusion of article 39 in the constitution is the hidden agenda of TPLF to achieve its plan to secede Erteia and Tigray from Ethiopia. Therefore, the right to secession is guaranteed unconditionally is a threat for our national unity that leads the possible disintegration of Ethiopians along ethnic lines.

In addition, external self-determination lead to separatist movement which further incentivizes the dissolution of the country. Today Ethno nationalist movements grew immensely. For instance, at national level there are two ethno-regional movements that offer armed resistance such as the Oromo Liberation Front (OLF) for Oromo autonomy rights in various parts of the country, and the Ogaden National Liberation Front (ONLF) for autonomy or independence of the Somali in Eastern Ethiopia. The point here is that it seems that article 39 of the constitution has allowed some ethnic-based organizations in the country from historically underprivileged groups to develop secessionist movement. Obviously, ethno-regional insurgent movements existed before the adoption of the FDRE constitution, but now article 39 has given the legal ground for such movements. Based on such legal framework those ethno-regional movements argued that when Eritrea had a valid claim to secession and independence, then why others regions have a similarly valid claim? Meanwhile the government of Ethiopia has banned several nationalistic liberation groups and organizations and deployed the national army to prevent groups like the OLF from trying to secede (Daniel, 2017). This showed that EPRDF has given only lip service to the right to secession to all ethnic groups. Therefore, Article 39 has need to be amended to solve such insurgent movements who are endanger the unity of the country.

As a matter of fact, it is challenging to implement the right to secession like other collectiverights due to the existence of complex demographic patterns as well as there is strong geographical and economic ties in the past(Brhanu, 2007). when the secession question is approved by the 2/3 majority of the legislative council of the nation, nationality and people concerned and that not all ethnic groups have this necessary legislative council it seems that the practicality of the unconditional secession right is problematic. To this regard (Lovise, 2006) explain thateven though successfully completing the constitutional procedures required to secession, it will be difficult for its applicability. There is a critical paradox between theory and actual practice in the constitution. For instance, what happen in the case where a state's exercise of the right to secede contradicts with the wishes of one or several indigenous or exogenous groups<sup>2</sup>within its borders opting to remain united with the state of Ethiopia(Lovise, 2006). Obviously, it is difficult to apply the states like Benishangul/Gumuz, SNNPRS and Gambella since, each of these states belongs to the diverse ethnic groups that reside within its geographical boundaries collectively which no particular groups has an exclusive claim to secede. As a result, the external aspect of self-determination under article 39 has not any relevance significant regarding secession exceptweakening our national identity. As a result, demanding the rightto secession dismantle the Ethiopian Federation like that of the former Soviet Union, and Yugoslavia.

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<sup>2</sup>Exogenous groups are peoples who were moved to the region in a more recent past and can therefore be seen as internal migrants or peoples in the region

## 5. Conclusion

Since 1995, Ethiopia established an ethnic federal system which organized based on ethno-linguistic line. The constitution is given full recognition to the ethnic diversity and the willingness to accommodate it through the right to self-determination up to secession. The right to self-determination under the constitution includes both internal and external self-determination. The internal aspect includes the right to speak, write, develop their language; to express, promote and develop their culture; preserve their history; and to self-government and equitable representation in both level of governments. On the other hand, the right to secession implies to secede from the federation and establish an independent state.

According to international law, the right to secession was applied most frequently to two types of population such as at postcolonial situations and people who are under foreign domination. Except those two situations the right to secession is never accepted at the various UN resolutions. To this end, Ethiopia is the only African country that was not colonized and free from any foreign domination. Thus, the inclusion of right to secession in the constitution is a hidden agenda of TPLF to get a legal significant for Tigray's independence in the pre-text of self-determination. However, obviously, the people of Tigray is not colonized and subject to foreign domination. Even though Tigray secede from Ethiopia, the international community has not any legal ground to recognize as an independent state. Moreover, organizing politics along ethnic line exacerbated the growth of intra-ethnic conflict and ethnic classification which endanger our nation identity unless an appropriate measure should be taken. Constructing and initiating ethnic identities are very destructive in the long run due to the narrow and egocentric nature of ethnic demands. To that end, Article 39 give legal ground for any groups who wish to secede from Ethiopia. But practically it is difficult to exercise such demands in the context of Ethiopia which has been influenced by centuries of migration and interaction between ethnic groups, who has created a complex pattern of ethnic, linguistic and religious groups.

## 6. Recommendations

Thus, we will emphasize incentives for socio-economic and political integration all together with the recognition and respect of distinct identities of ethnic groups rather than focusing on distinctiveness and differences. Feelings of separate identity lead to ethnic tensions and conflicts that finally endanger our national identity unless we adopt more flexible and workable formula which tries to satisfy the demands of all groups.

I also advised that all concerned actors deeply debated about the shortcoming of ethnic federalism and take lesson from other successful federations like USA, India, Brazil, and Canada. Based on the experience of those countries, we adopt suitable political system by considering the past, the present and future aspirations.

Finally it is necessary to amend the constitution and simultaneously established long-lasting federal system that tries to accommodate the changing scenario of the country.

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